IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 20TH DECEMBER 2006 / 29TH AGRAHAYANA 1928

ST.Rev..No. 128 of 2005

TA.719/2003 of KERALA S.T.A.T. ADDL.BENCH I, ERNAKULAM
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PETITIONER/APPELLANT:

KERALA CHEMICALS AND PROTEINS LIMITED
PANAMPILLY NAGAR, COCHIN-682 036.

BY ADV. SRI.M.PATHROSE MATTHAI (SR.)

RESPONDENT/RESPONDENT:

STATE OF KERALA, REP. BY SECRETARY
(TAXES), COMMISSIONER OF COMMERCIAL
TAXES, THIRUVANANTHAPURAM.

BY GOVT. PLEADER SRI.GEORGEKUTTY MATHEW

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 05/12/2006 ALONG WITH STRV NO. 183 OF 2005, THE COURT ON 20/12/2006 DELIVERED THE FOLLOWING:

P.R. Raman & K.P.Balachandran, JJ.

S.T.Revision Nos.128 & 183 Of 2005

COMMON JUDGMENT

Balachandran, J.

Assesee in both these revisions is the same. The Sales Tax Appellate Tribunal, Addl. Bench I, Ernakulam disposed of a batch of four appeals by the impugned order. They were T.A.Nos.719/03, 720/03, 840/03 and 841/03. T.A.Nos.719/03 & 720/03 are appeals filed respectively in relation to the assessments under the Kerala General Sales Tax (KGST) Act and Central Sales Tax (CST) Act for the assessment year 1997-98 and T.A.Nos.840/03 & 841/03 are appeals filed respectively in relation to the assessments under the KGST and CST Acts for the assessment year 1998-99. These revisions relate to KGST and CST assessments for the year 1997-98, which were the subject matter respectively in T.A.Nos.719/03 & 720/03.

2. The common issue raised in these revisions is whether the assessments are not barred by limitation in view of the third proviso to Section 17(6) of the KGST Act, as the assessment was not completed within four months from the date of checking of the books of accounts of the assessee for the purpose of assessment for the assessment year concerned.

3. No other point is raised in S.T.Rev. No.128/05. Additional points 2 and 3 taken in S.T. Rev.No.183/05, in addition to the common ground taken as aforesaid, are the following:

> "2. The amount of customs duty credit under the Duty Entitlement Passbook Scheme is money or cash and therefore not goods under the Sales of Goods Act and Central Sales Tax Act and cannot be subject of trade or commerce and therefore not liable to Sales Tax under the Central Sales Tax Act.
>
> 3. Whether penal interest can be levied

retrospectively from 1.4.1998 till the date of order of assessment on 4.1.2003 when Section 9 of the Central Sales Tax Act was amended only on 1.4.2000."

4. Additional Ground No.2 is not pressed into service by the learned counsel for the petitioner as it now stands settled that the transfer of Duty Entitlement Pass Book (DEPB) is sale of goods liable to be assessed to tax.

5. The third ground is also not pressed by the learned counsel for the petitioner in view of the validation provision in Section 120 of the Finance Act, 2000, which saves levy of interest for the period in issue.

6. The common ground of limitation taken in these revisions is on the basis that the books of accounts of the petitioner/assessee were verified by the assessing authority on 19.12.2001, whereas, the assessment order was passed only on 4.1.2003, viz., much beyond four months allowed by the third

proviso to Section 17(6) of the KGST Act.

7. When the matter came up for consideration before another Bench, a statement was directed to be filed by the assessing officer regarding the date on which re-checking of books of accounts was done. Accordingly, a statement was filed stating that a re-checking of the books of accounts was done on 29.11.2002. The original assessment file produced through the learned Government Pleader also showed that an endorsement is made in the file "re-checked" with the initial of the assessing officer dated 29.11.2002. But, the assessee has filed an affidavit denying the statement and thereunder he has further averred that no such re-checking was done. He also produced the original ledger book, which showed that there is an endorsement of the assessing officer on 19.12.2001 only to the effect that the books of accounts were checked and that there is no other endorsement or initial on any other date regarding re-checking of

the books of accounts for the assessment year concerned. It is also argued by the learned counsel for the petitioner that, if at all, a re-checking of the books of accounts was found necessary, a notice, as contemplated under Rule 72 of the KGST Rules, ought to have been issued, but, no such notice had been issued in the instant case. However, the Tribunal has not rendered any finding on the above aspects.

8. When the case was considered by us on 30.11.2006, we directed the learned Government Pleader to produce the original assessment file and the petitioner/assessee to produce the original books of accounts verified by the concerned assessing authority and adjourned the case to 5.12.2006, directing the learned Government Pleader that he may instruct the assessing officer also to be present, if he so desires. Accordingly, the assessment file was produced and the assessing officer was also present. When the matter was

heard on 5.12.2006, the assessee produced the ledger verified by the assessing officer. The ledger showed verification of books of accounts by the assessing officer on 19.12.2001 under his initials. No other endorsement is there in the ledger regarding re-checking of books of accounts on any other date. At the same time, in the assessment file, an endorsement of re-checking of books of accounts also is seen made on 29.11.2002, when the assessment order is dated 4.1.2003. Even in case a re-checking was done on 29.11.2002, that itself was after eleven months of the initial checking of the books of accounts.

9. It is submitted by the learned Government Pleader that after initial checking of the books of accounts, whenever a doubt arises, it is the practice followed by the assessing authorities to re-check the books of accounts, that the assessee in all such cases produces the books of accounts on request without any fresh notice being issued under

Rule 72 of the KGST Rules and that all the dates on which re-checking was done will be evidenced from the endorsements made in the books of accounts of the assessee, which takes in several registers other than the ledger and it is only on verification of all the books of accounts so maintained by the assessee for the assessment year concerned, can it be ascertained as to on what all dates was the re-checking done by the assessing authority.

10. We note that the Tribunal has not considered the question of limitation with reference to the third proviso to Section 17(6) of the KGST Act. We deem it not appropriate for us to verify all the registers to ascertain the fact as to whether there was any re-checking of the books of accounts before the bar of limitation set in after the initial verification of the books of accounts by the assessing authority on 19.12.2001; when that aspect was not looked into by the last

fact finding authority - the Appellate Tribunal and we are of the view that the matter has to be remanded back to the Tribunal to re-examine the issue and dispose of the matter afresh. All the same, we hold that in case after the initial checking of the books of accounts on 19.12.2001 there was no re-checking of the books of accounts by the assessing authority either within four months therefrom or within six months from such date with the permission of the next higher authority, the assessment would be barred by limitation and that the re-checking of the books of accounts, if at all, any conducted beyond that time, cannot save the assessment from the bar of limitation.

In the result, allowing these revisions in part, we remand the cases back to the Sales Tax Appellate Tribunal to examine the question as to whether there was re-checking of books of accounts by the assessing authority either within four

months from 19.12.2001, the date on which the books of accounts were verified initially by the assessing authority or within six months with the permission of the next higher authority and if so, whether the alleged re-checking on 29.11.2002 is true and the assessment in the cases is saved from the bar of limitation or whether the same is barred by limitation by reason of the third proviso to Section 17(6) of the KGST Act and dispose of the appeals afresh. It is made clear that on all other aspects the findings of the Appellate Tribunal are confirmed.

The Registry shall forward the assessment file received from the assessing authority through the learned Government Pleader, direct to the Secretary of the Sales Tax Appellate Tribunal, Addl. Bench I, Ernakulam in a sealed cover for the Tribunal to take appropriate action in compliance with the directions given above, causing all the books of accounts of the assessee in relation to the

assessment year concerned to be produced for perusal. The Tribunal shall dispose of the appeals (T.A.Nos.719/03 & 720/03) afresh within three months from the date of receipt of a copy of this judgment along with the assessment file.

(P.R.Raman, Judge)

20th December, 2006

(K.P.Balachandran, Judge)

tkv